IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

WP(C).No. 30139 of 2006(K)

EP.11/2005 of MUNSIFF MAGISTRATE, SULTHAN BATHERI

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PETITIONER:

T.R.RAVI, S/O.RAGHAVAN,
AGED 38 YEARS, AGRICULTURIST, THEKKUMKATTIL HOUSE, MANALVAYAL P.O., IRULAM AMSOM, SULTHAN BATHERY TALUK, WAYANAD.

BY ADV. SRI.M.SASINDRAN
SRI.TOJAN J. VATHIKULAM

RESPONDENTS:

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1. ALI KUNHU, S/O.KOCHU THAMBI,
AGED ABOUT 33 YEARS, PUTHANVEETTIL HOUSE, MANALVAYAL P.O., ERULAM AMSOM, SULTHAN BATHERY TALUK, WYANAD.

2. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, LOCAL SELF GOVERNMENT DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

BY ADV. SRI.RAFFEEKH.K
GOVERNMENT PLEADER SMT. LAKSHMI RANI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/02/2007, ALONG WITH CRP NO. 521 OF 2005 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P (C) NO.30139/2006

APPENDIX

PETITIONER'S EXHIBITS:

EXHIBIT.P1: A TRUE COPY OF THE ELECTION PETITION (E.P. No.11/2005) ON THE FILES OF THE MUNSIFF/MAGISTRATE COURT, SULTHAN BATHERY.

(TRUE COPY)

P.A. TO JUDGE

THOTTATHIL B.RADHAKRISHNAN, J.

W.P. (C) No.30139 of 2006-K

Dated this the 1st day of February, 2007

JUDGMENT

This writ petition under Article 227 of the Constitution of India raises the question as to whether the competence of a court of exclusive territorial jurisdiction to try an election petition under the Kerala Panchayat Raj Act, 1994 - "Act", for short - depends upon it being notified under Section 88 (2) of that Act.

2. The brief undisputed facts: Poothady Grama Panchayat is a Village Panchayat constituted under the Act. Its headquarters was within the territorial jurisdiction of the Munsiff's Court, Kalpetta while the Government of Kerala, in consultation with the High Court of Kerala issued notification SRO No.1120/95 enumerating that and other courts as the appropriate courts to try election petitions under the Act. Thereafter, by its establishment under Section 5 of the Kerala

Civil Courts Act, 1957, "C.C Act", for short, on the basis of G.O (MS) No.185/2000/Home dated 4.8.2000, the Munsiff's Court, Sulthan Bathery has the exclusive territorial jurisdiction over the area where the headquarters of the Poothady Grama Panchayat is situated. Petitioner filed an election petition before the Munsiff's Court, Sulthan Bathery challenging the election of the first respondent as a member of that Village Panchayat, in the election held on 26-09-2005. That court registered it as E.P. No.11 of 2005 and issued notice to first respondent.

3. The reliefs sought for in this writ petition are a declaration that the Munsiff's Court, Sulthan Bathery has jurisdiction to try the above election petition and a direction to expedite trial. These reliefs are sought for on the averment that the election petition is not being taken up for trial on the apparent reason that the Munsiff's Court, Sulthan Bathery is not a court notified under Section 88 (2) of the Act.

4. Having regard to the general importance of the questions of law arising for decision, on the undisputed facts, touching the administration of justice in this State, it is appropriate to decide that issue rather than relegate the parties to the court below to have a decision on that. Accordingly, the learned counsel for the parties are heard.

5. The writ petitioner's contention is that by the constitution of the Munsiff's Court, Sulthan Bathery, with exclusive territorial jurisdiction, that court alone has jurisdiction and that the continued inclusion of Munsiff's Court, Kalpetta in SRO No.1125/95 and the non-issuance of a notification under Section 88 (2) of the Act are of no consequence.

6. The first respondent's contention is that unless the Munsiff's Court, Sulthan Bathery is notified, as an appropriate court, under Section 88 (2) of the Act, it does not gain jurisdiction and that until then, the Munsiff's Court, Kalpetta would continue to have jurisdiction, in view of SRO No. 1120/95.

7. The answer to the issue in hand depends on the proper interpretation and construction of the relevant provisions of Chapter X of the Act, particularly, Section 88 herein, in the backdrop of the Constitution.

8. Article 243-O (b) of the Constitution enjoins, among other things, that notwithstanding anything contained in the Constitution, no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for, by or under any law made by the Legislature of a State.

9. Section 87 in Chapter X of the Act provides that no election shall be called in question except by an election petition presented in accordance with the provisions of that Chapter. Section 89 (1) provides that an election petition may be presented to the appropriate court as specified in Section 88. Section 89 read with Section 87 shows that an election petition can be presented only to the appropriate court as specified in Section 88 of the Act.

10. Sub section (1) of Section 88 of the Act reads as follows:

> **"88. (1) The Court competent to try election petitions.**:-
> The Court having jurisdiction to try an election petition shall be,-
>
> (a) in the case of a Village Panchayat, the Munsiff's Court having jurisdiction over the place in which the headquarters of the Panchayat is located; and
>
> (b) in the case of a Block Panchayat or District Panchayat the District Court having jurisdiction over the place in which the headquarters of the Panchayat concerned is located."

11. Clauses (a) and (b) of Sub section 1 of Section 88 of the Act determine the courts competent to try the election petitions. Election petitions in relation to Village Panchayats are to be tried by the Munsiff's Court and the election petitions in relation to Block Panchayats or District Panchayats, as the case may be, are to be tried by the District Court. The choice of the

court made in Sub section 1 of Section 88 is with reference to the territorial jurisdiction of the court and the place at which the headquarters of the Panchayat is located. Therefore, it is that court which has territorial jurisdiction, over the place in which the headquarters of the Panchayat is located, as on the date of accrual of the cause of action for the election petition, which alone, would have the competence to try that election petition. That being so, if the headquarters of a Panchayat is located outside the jurisdiction of a court, that court will not have the jurisdiction to try an election petition in the case of that Panchayat.

12. Section 88 of the Act is not a provision enabling the establishment of courts. It is a statutory service that empowers established courts, to try election petitions under the Act. Sub section 1 of Section 88 is a provision amounting to legislative conferment of jurisdiction. It is not a provision that confers power on the Government, even if it be in consultation with the High Court, to confer jurisdiction on any court, thereby designating it to try an election petition. The jurisdiction of the

courts by virtue of Clauses (a) & (b) of Sub section 1 of Section 88 does not depend upon any further action by any other authority for conferment of such power, but springs upon the coming into force of the Act and eo instanti empowers all existing appropriate courts and flows into any court established thereafter under the C.C Act, but would fall within the contents of Section 88 (1) of the Act, on account of its territorial jurisdiction.

13. The legal incidence flowing out of Sub section 1 of Section 88 of the Act, noticed above, does not depend upon any condition precedent, even of the Government issuing a notification, in consultation with the High Court, under Sub section 2 of Section 88. A notification under Sub section 2 of Section 88 is not one that would or could empower any court, thereby making it competent to try an election petition.

14. The empowering of courts to try an election petitions, under the Act, not being dependent on any notification under Sub section 2 of Section 88, every Munsiff's Court or the District

Court, as the case may be, would, on and after coming into force of Section 88 of the Act or on and after its constitution under the C.C Act, whichever is later, stand empowered to try an election petition in relation to any panchayat whose headquarters is located within the territorial jurisdiction of that court. As a corollary, no court except that which has territorial jurisdiction over the place in which the headquarters of the panchayat is located will have jurisdiction to try an election petition in relation to that panchayat.

15. The statutory mandate to the Government in Sub section 2 of Section 88, to notify the appropriate courts in the Gazette in consultation with the High Court is a legislative direction to notify the appropriate courts that fall under Section 88 (1) (a) & (b). The requirements of such a notification under Section 88 (2) are two-fold. Firstly, it is to inform the public at large regarding the identity of the courts which get jurisdiction by virtue of Sub section 1 of Section 88. This legislative intention is easily discernible since the identity of the court having jurisdiction to try an election petition in relation to

a Panchayat is a matter of great public importance and about which the public should have easy access, as information, particularly because an election can be challenged by any candidate or by any elector. Secondly, while issuing a notification under Sub section (2) of Section 88, in consultation with the High Court, the entertainment of election petitions can be confined, for administrative efficacy and convenience, to one among the different appropriate courts having co-extensive territorial jurisdiction, like where there are more than one Munsiffs or District Judges, as the case may be, exercising powers, as enjoined in terms of the Kerala Civil Courts Act. In this view, it has also to be held that Sub section 2 of Section 88 of the Act is not mandatory, but only directory. Section 88 (1) is a substantive provision while Section 88 (2) is not.

16. So much so, the jurisdiction of a court competent to try an election petition under Section 88 (1) is not dependant on a notification under Section 88 (2) of the Act and the enlisting of a court in such a notification, will not cloth that court with such competence and jurisdiction that it lacks in terms of Sub

section (1) of Section 88 of the Act.

17. The aforesaid principles apply also to appeals, on a proper interpretation of Section 113, in particular, sub section (1) (e) thereof, of the Act.

18. Applying the aforesaid principles, on and after the constitution of the Munsiff's Court, Sulthan Bathery, though that was after the coming into force of the Act and the issuance of SRO No.1120/95, the said court alone has jurisdiction to try election petitions in relation to Poothady Grama Panchayat.

19. This leads to the effect of the existing notification SRO No.1120/95, showing Kalpetta Munsiff's Court as an appropriate court to try election petitions and the submission of the learned counsel for the 1st respondent that in view of such notification, the Munsiff's Court, Sulthan Bathery cannot have jurisdiction or atleast could have jurisdiction only along with the Munsiff's Court, Kalpetta. As already noticed, the Munsiff's Court which

has jurisdiction over the place in which the headquarters of the Panchayat is located, would alone have jurisdiction to try the election petition in relation to that Panchayat. Section 87 of the Act provides that no election shall be called in question except by an election petition presented in accordance with the provisions of Chapter X. The conjoint effect of Sections 88 (1) and 87, in this case, is that Munsiff's Court, Sulthan Bathery has the exclusive jurisdiction to try election petitions in relation to Poothady Grama Panchayat and no other Munsiff's Court, including the Kalpetta Munsiff's Court, would have jurisdiction to try such election petition. The continuance of the notification by the Government under Section 88 (2), to that extent, is of no consequence, but has become superfluous or otiose, more so because, as held above, it is not from such a notification that the authority is generated for the court to try the election petition. Therefore, to the extent, a new Munsiff's Court or a District Court comes into being as a result of its constitution and the headquarters of any Panchayat falls exclusively within the territorial jurisdiction of that new court, the competence to try election petitions in

relation to that Panchayat will stand trimmed and conferred on that court alone, even if it is one constituted after the issuance of any notification by the Government under Section 88 (2) and even if such notification continues to show any other court that had territorial jurisdiction to try the election petition in relation to particular panchayat, as an appropriate court.

20. Not only that, if the Munsiff's Court, Kalpetta is to be treated as a court competent to try election petitions in relation to Poothady Grama Panchayat merely because such notification continues, the said notification will run contrary to the provisions in Sub section 1 (a) of Section 88 which is the empowering provision. Therefore, the arguments of the 1st respondent that in view of the notification SRO No.1120/95, it is the Munsiff's Court, Kalpetta, which would have jurisdiction or at least that the said court also would have jurisdiction are unsustainable.

In the result:

(i) it is declared that the Munsiff's Court, Sulthan Bathery has exclusive jurisdiction to try and dispose of election petitions in relation to Poothady Grama Panchayat;

(ii) Following this declaration, the Munsiff's Court, Sulthan Bathery will endeavour to try and dispose of Ext.P1 Election Petition No.11/2005 without delay;

(iii) No Costs.

THOTTATHIL B.RADHAKRISHNAN,
JUDGE.

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